

**TESTIMONY OF
ERIE COUNTY SHERIFF
PATRICK M. GALLIVAN**

**TO THE
ERIE COUNTY LEGISLATURE**

PURSUANT TO ORDER OF

**NEW YORK STATE
SUPREME COURT JUSTICE JOSEPH MAKOWSKI**

FEBRUARY 28, 2005

10:00 A.M.

It is widely recognized that the most fundamental duty of government is to protect its citizens. The County Executive and many members of this Honorable Body have stated on the record that the safety of the public is the number one priority in the County of Erie. I agree and would urge the members of this body to remember that and to take such steps as are necessary to ensure that the people and property of this County are protected. My office has carefully examined the mandates of the State Constitution, State Statutes, the County Charter and Administrative Code. The Sheriff's Office is also mindful of the economic realities of our times and it was in consideration of those concerns that an initial budgetary request was made which was less than that expended during the 2004 fiscal year. This body has sought fit to reduce those expenditures for important and necessary services first in the Corrected Adopted Amended Budget and later in the proceedings after mediation on February 14, 2005. What has become known as the Tan budget did not provide for many necessary projects and eliminated valuable prevention programs to our community. While the Sheriff's Office does not believe that such reductions are in the best interests of the community and do not enhance the safety of the residents of Erie County, we will honor and accept the decision of the Court and the direction of the Legislature on this issue. Further reductions, however, are unacceptable because they will go to the heart of the mandated functions of the Office of Sheriff as the conservator of the peace of the County as that term is defined in the law.

As a public officer specifically provided for in the State Constitution, the Office of Sheriff exists to uphold the laws of this State and to ensure public safety. Long rooted in common law, the Office of Sheriff predates the Constitution and finds its beginnings centuries ago in Britain as the guardian of the shire. While the specific duties have changed over time, the essential functions of the position have remained constant as the protector and conservator of the peace, a guardian of the lives and property in the County. While State and local Legislators may impose additional duties on the Office of

Sheriff, they may not destroy the power or ability of the Office of Sheriff to perform its essential and mandated duties. The Office of Sheriff is obligated to perform not only those duties long held under common law, but also those additional duties imposed upon the Constitutional office under the various statutes. In an attempt to reduce funding for this office even more, this body has demanded justification in the most minute detail for each job performed. What price do you place on safety, security, and peace? What justification is necessary to ensure that society is protected? What lessons would you seek the citizens to learn with less protection?

It is said that all legislation tending to secure the peace, order, safety, and comfort of the community naturally falls within the province of the Sheriff. Beyond the centuries old common law, the County Law of the State of New York under Section 650 provides that a Sheriff as a Constitutional Officer, rather than a department head in the county, is mandated to be an Officer of the Court and the Conservator of the Peace in each respective county of the State. The Sheriff is further charged, under both State Statute and the County Charter, with maintaining the jails within the county. Under State law, we are also required to perform certain duties within the civil process realm on behalf of the Courts, public authorities, and the citizens of the county. These are not discretionary duties. These are not options which can be summarily ignored or considered purely additional and voluntary. They go to the heart of service of this Office to the citizens to ensure public safety. Basic to all of this is to uphold and enforce the laws fairly, swiftly, and without discrimination. Enforcing the law and protecting the public are not voluntary and additional duties which are not mandated as has been suggested. It is not optional for the Office of Sheriff, as has been argued, to simply not respond to calls from the public, to not make arrests, to not investigate violations of law, to not investigate accidents, to not make DWI arrests, to not enforce the Vehicle and Traffic Laws, and to not provide a basic level of law enforcement for all of the citizens of the County, including those that do and do not have their own full-time police protection.

To suggest that these duties are purely voluntary and need not be followed, and thus can be eliminated merely by refusing any funding, not only violates the law, it destroys the ability of this Office to perform its essential and mandated duties, and even worse, it is an abdication of the fundamental responsibility government has to protect its citizens.

Suggestions to the contrary ignore the clear mandates under the law. We have provided you with a compilation of the requirements of this Office under the various State statutes. We hereby make them part of the record of these proceedings. While we will address them more specifically as we review the appropriations made for the Sheriff's Office, some comments and observations are necessary for the record.

As a function of the division of duties, the Sheriff's Office consists of 2 divisions for budgetary purposes. The Jail Management Division maintains the Erie County Holding Center and the Erie County Correctional Facility. We are constitutionally mandated under the Bill of Rights to provide for due process for all prisoners and further to maintain each facility to ensure that there is no cruel and unusual punishment. Our founding fathers felt strongly enough about these basic and fundamental rights to place them squarely within the United States Constitution. School children around the Country learn about these important protections to life and liberty early in grade school, shame on the elected officials who have forgotten this.

The New York State Commission of Corrections, pursuant to Correction Law, "promulgates rules and regulations establishing minimum standards for the care, custody, correctional treatment, supervision, discipline and other correctional programs for all persons confined in local correctional institutions." You have been provided with a copy of these standards.

The State also mandates certain levels of coverage within facilities with respect to staffing levels. I have provided you with a copy of the most recent staffing analysis for both the Erie County Holding Center and the Erie County Correctional Facility. Under the Tan budget appropriations, the Sheriff's Office does not meet the

Commission of Corrections' minimum staffing requirements. In spite of this, the appropriations for the jails have been reduced by over \$5 million from what was expended in 2004 and over \$4.5 million from the request originally submitted by this Office. We are including a copy of the New York State Minimum Standards, as well as the referenced staffing analysis, and ask that it be placed in the official record. Further reductions in these appropriations are simply unacceptable and could impair the ability of the Sheriff's Office to protect the rights of inmates as guaranteed by the Constitution.

As an Officer of the Court as set forth under Section 650 of the County Law, the Sheriff is required by law to transport individuals to and from the Courts, serve, execute and enforce warrants (CPLR Section 5250, General City Law Section 83 and 140, RPAPL Section 749, Public Health Law Section 309, Indian Law Section 8, Labor Law Section 573 and Tax Law Section 301), serve and enforce orders of protection (Criminal Procedure Law Section 53, Executive Law Section 221-a, Family Court Act Section 168), and to administer to the needs of the Court. These duties are non-delegable and further provide for the protection of the peace, the Courts, and the Court personnel. The Judiciary maintains the authority to demand these services from the Sheriff's Office, and we are mandated to provide them under the Judiciary Law. As an officer of the Court, the County Law requires the Sheriff to act as process server on behalf of the Courts and in the enforcement of judgments taken in Court (CPLR). In 2004, our Civil Division handled 9,098 civil cases, processed \$7,481,620 in gross receipts and produced \$909,084 in revenue for the County. A copy of the statistical report for the year 2004 has been provided for the record. These responsibilities, in large part, are funded through the Sheriff's Division Budget and require a minimum of \$2,462,790.

The third, and perhaps the most vital to the public, requirement under County Law Section 650 is that the Sheriff is the conservator of the peace of the County. We are required under common law, the New York State Constitution, and statutory law to protect the people and property within Erie County. This obligation is mandatory. It is a

misnomer to classify these duties as simply road patrol as has been the focus of some members of this body and others. To do so ignores the fundamental function of police services, in general, and the Sheriff's Office in particular, to enforce the laws of the State of New York. As conservator of the peace, pursuant to Section 650, it is the duty of the Sheriff of the County to preserve the peace, enforce the laws and arrest, and commit to jail, felons and other violators of the statutory or common law. As we have previously stated, these are not voluntary or additional duties, they are mandated by the law. It is improper for this body or its representatives to suggest that we need not enforce the laws throughout the County, that we do not need to respond to emergency or other calls, that we do not arrest offenders, investigate violations of law, investigate accidents, make DWI arrests, or enforce the Vehicle and Traffic Laws. To suggest this ignores the mandate as "conservator of the peace," and ignores the explicit language in the statutes which we have provided you today, as well as the Resolutions previously made by this very same Legislature. In June 2004, for example, this Legislature passed a Resolution recognizing the seriousness of driving while intoxicated, specifically stating:

"Driving While Intoxicated and Driving While Ability Impaired are serious criminal offenses which have tragic effects on Erie County, New York, and the United States."

The purpose and intent of this Resolution was, ". . .to curb drunk driving and save lives."

"The Erie County Sheriff. . .(is) hereby authorized to promulgate such rules and regulations that are lawful, necessary and appropriate to implement, enforce or otherwise carry out the purposes of the Local Law."

Statements made by your counsel in Court further ignore the language within the Vehicle and Traffic Law under Section 423 which mandates enforcement of the Vehicle

and Traffic Laws by any police or peace officer as those terms are defined under Section 132 of that law and related statutes. Article 35 of the Vehicle and Traffic Law provides for the uniform enforcement of the provisions of the traffic laws throughout the State and specifically prohibit any local municipality, including the County, from modifying those laws, except as expressly permitted. To contend, therefore, that these are not mandated duties is to reject the clear and unambiguous language of the statute. To reduce the appropriations of the Sheriff's Office from the Tan budget which already reduced our Sheriff's Division by over \$3 million from the 2004 actual expenditures and almost \$2.2 million from the Corrected Adopted Amended Budget passed in December, would mean that this Office could not meet the mandates required by law. I know this based upon my 23 years of experience in law enforcement and my last 7 years as the duly elected Sheriff of Erie County. The further reduction of an additional \$4.1 million from the budget would severely and negatively impact the lives and welfare of the people of this County. It would also mean that we could not meet our legal requirements, thus placing both this Office and the County of Erie in violation of State laws and mandates and exposing both to potential and significant liability.

We are here today at the direction of the Court "to meet, review and address on the record the February 17, 2005 appropriation reductions within the context of our mandated, nondiscretionary, statutory, charter, or administrative code duties." As the Court has directed, we are not here to justify or review initial budgetary requests from last Fall or to substantiate any appropriations from the Corrected Adopted Amended Budget in December. The time for that is past. We have been directed by the Court to begin with the Tan budget from February 14, 2005 and our further comments and presentation will flow from that document and those appropriations, which unlike the February 17 Resolution, were the product of discussions with the elected officials and their input. The same cannot be said of what transpired later in that same week. We welcome this opportunity to once again present our position, this time on the record,

and to show how public safety and our mandates can only be met, albeit barely, with the level of appropriations from the February 14 proceedings. Let the record also reflect that even with appropriations at the February 14 levels, the Sheriff's Office cannot perform those additional duties which we feel are important to the residents of Erie County, such as DARE and other community-related crime prevention programs. I am mindful of the budgetary dilemma facing this body and the executive branch. As a taxpayer, I am sensitive to the burden which has already been placed on the backs of the people of this County. It was with that concern that we agreed to a reduction in the Sheriff's Division budget of over 20%. We do not believe that this is ultimately in the best interests of the residents, but we will do our part by eliminating important, but discretionary services to the public. We cannot do more, however, without significantly and negatively impacting the safety of the public and without violating the law and my oath to properly perform my mandated duties.

I will not debate the reasons for the problems facing the County today. My focus, and indeed the focus of everyone in the Sheriff's Office, is to maintain the peace and to protect the people and property of Erie County. We are here to protect the citizens of Erie County, to stand for public safety and to help this body understand the mandates under the law. To do so, a review of appropriations is in order. Let me first make clear, however, County Law Section 652(2) and the County Charter specifically provide that the Sheriff must perform his duties, "as the [Sheriff] deems necessary for the conduct of his office." The authority for the operational needs of the Office of the Sheriff rests not with the County Legislature or the County Executive, but rather with the independently elected constitutional Office of Sheriff. It is the Sheriff's role to determine methods and procedures for law enforcement within the County, which you have publicly recognized.

Note for the record, in 2004, the Erie County Sheriff's Office expenditures were \$69.7 million. Working in cooperation with your Honorable Body and the County

Executive, I reduced my budget by over 10% for 2005 (Corrected Adopted Amended Budget). I further reduced the Sheriff's Division budget by an additional 10%, resulting in our Tan budget appropriations.

All that is now left barely provides for us to meet our mandates.

Our contractual obligations and agreements require \$3,949,303.

Charter mandated positions requires \$203,832.

The Sheriff's Division budget provides for the administration of all Divisions of the Erie County Sheriff's Office, including the Jail Management Division. Administration operates pursuant to ADA, FMLA, FLSA, EEO, NYS Labor Law, NYS Civil Service Law, NYS Executive Law, NYS Division of Criminal Justice Services requirement, and other applicable statutes, charter and code requirements, County policy and collective bargaining agreements. These have already been reduced by over 25%. This mandatory area requires a minimum of \$1,136,846.

County Law Section 650 and applicable statute requires the Sheriff to be the officer of the Court, as outlined above. These duties require the Sheriff to be "conservator of the peace" under the Common Law and County Law Section 650 and as such he must respond to calls for assistance. So important is this duty, and so interwoven into the office of the Sheriff, the Sheriff may incur personal liability for neglecting it. The personal liability placed on the Sheriff is important as it drives home the role of the Sheriff to protect the community's health and safety.

The County Sheriff, his Undersheriff and deputies are listed under Criminal Procedure Law Section 1.20(34)(b) and Section 2.10(2), as police and peace officers. The stated purpose is to uphold the laws of the State of New York and to protect the

persons and property within the County. Under Vehicle and Traffic Law Section 207(2), such officers are required to prepare records and reports in connection with traffic violations. Under Section 658 of the County Law, the Sheriff is charged with serving the Summons in lieu of arrest in cases of violations of Vehicle and Traffic Law and related ordinances. Under Section 265.20 of the Penal Law the Sheriff is required to accept surrender of illegal weapons

The Sheriff has a mandated statutory duty to prevent the destruction of life and property in the event of a social disturbance that could result from mob or riot activity. Gen. Mun. Law Section 71. As such, not only will the legislature's cuts effectively eliminate your deponent's ability to respond to such social disturbance, it will also expose your deponent to personal liability.

Further, Mental Hygiene Law Section 29.11(1) requires the Sheriff to transport mental health patients to the facility designated by the Commissioner. Section 8 of the Indian Law requires the Sheriff to execute a warrant to remove intruders from Indian Lands. The Sheriff also has mandated duties under Section 153 of the Alcoholic Beverage Control Law; Sections 11-0915 and 71-0203 of the Environmental Conservation Law; Section 2016 of the Education Law; Section 573 of the Labor Law; and Sections 20, 71, 130 and 139 of the Navigation Law. In the time you have allowed me, there are too many laws enumerated in their entirety. However, I have provided more than 1,000 to you. I have enumerated but a few of the statutory duties that the State Legislature has added to supplement, and indeed clarify, the duty of the Sheriff to conserve the peace beyond what historically has existed under the common law as it has evolved for over two hundred years.

Various court cases have held, and the New York State Attorney General has agreed, "The sheriff is required by law to provide services based on the need for police protection throughout the county," that it is "the duty of the sheriff in their various jurisdictions to preserve the peace, enforce the laws and arrest and commit to jail, felons and other violators of law," and "to respond professionally to calls for assistance from the citizenry."

The obvious starting point for these services is our 911 dispatch center which, in 2004, received 66,850 calls for police service. Our 911/ communications center requires a minimum of \$1,118,379.

To fulfill the mandates in various laws enumerated above, specialized training and dedicated staffing is required. These areas which include, but are not limited to weapons and ordinance, bomb disposal, arson investigation, aviation, marine/ navigation, and special weapons and tactics, require a minimum of \$451,326. It should be noted the Erie County Sheriff's Office is the only agency that is certified in Erie County, and in some cases, Western New York, to provide these specific services. It should also be noted we are the only law enforcement agency certified to respond to a Weapons of Mass Destruction/Bio-Terror events.

Narcotics enforcement requires a minimum of \$804,620. Note this is a reduction of nearly 50%, while at the same time 2 out of every 3 people in jail are connected to drug and alcohol abuse.

Highly trained and skilled personnel necessary to investigate violent and serious crime pursuant to mandates require a minimum of \$464,950. Note this, too, has already been reduced by 50%.

Minimal, acceptable levels of supervision pursuant to mandates requires a minimum of \$831,947.

The remaining personnel funded in the required amount of \$1,172,556 when accounting for collective bargaining agreement provisions leaves only 4 deputies per shift to cover over 1,000 square miles and provide service in 43 Cities, Towns and Villages, and the Cattaraugus Indian Reservation.

This is a reduction of more than 70% in staffing levels and will more than triple our response time for calls for service.

In 2004, the Erie County Sheriff's Office responded to 66,850 requests for police service, made 3,258 criminal arrests, investigated 2,604 accidents, made 14,476 Vehicle and Traffic Law arrests, and 383 driving while intoxicated arrests. The level of staffing remaining makes it all but impossible to properly fulfill our mandated duties.

As a point of reference, one can look to comparable counties for appropriate staffing levels. In neighboring Niagara County which has a population of 219,846, there are 124 criminal deputies, a ratio of 1 deputy per 1,772 residents. In Monroe County, there are 337 criminal deputies serving a population of 736,000, a ratio of 1 deputy per 2,183 residents. The population of 460,000 in Onondaga County is served by 264 criminal deputies, a ratio of 1 deputy to 1,742 residents. The Tan budget leaves us with a ratio of 1 criminal deputy for every 5,500 residents of Erie County, nearly 65% less than comparable counties.

Further reference can be made to the Department of Justice Statistics for national comparison which produce similar results. A copy of our 2003 Annual Report, as well as relevant statistics regarding 2004 activities of the Erie County Sheriff's Office,

is attached for your reference. Clearly at these funding levels, we will struggle to properly serve the citizens of Erie County and meet our mandates.

Failure to provide sufficient funding to meet these mandates will mean that public safety will be compromised and the Sheriff's Office will not be in compliance with the law. There is also a significant exposure for the rest of county government if the mandates are not met. Constitutional rights under the Fifth and Eighth Amendments will be impacted if insufficient funding is put in place which deprives people of due process under the law or exposes them to cruel and unusual punishment. Further, if we can not provide adequate transportation services at the direction of the Courts, speedy trials under the Sixth Amendment will also be affected together with the individual's due process rights. It is not inconceivable that with reduced funding below mandated levels, conditions in the Holding Center or County Penitentiary might deteriorate to a level which might impact the rights of those individuals incarcerated. In fact, one of the decisions relied upon in Court by your counsel involved a contempt of Court proceeding as a result of a suit by prisoners again the county.

Liability will also attach if we are unable to fulfill the directives of the Courts if we have insufficient manpower to serve warrants, transport prisoners, assist with juries, and provide for the safety and security of the Judiciary.

Both the County and the Sheriff's Office will be in jeopardy of increased liability claims based not only upon the failure to provide civil assistance, but also based upon the failure to meet special duties imposed upon a failure or inability to respond to calls. These calls are not additional, voluntary duties, but rather duties that all of the citizens of the County, have come to expect and rely upon for their safety and law enforcement. Absent these mandated services, increased crime and increased violence against people and property is most certainly assured. With increased liability to the Sheriff's Office comes increased liability to the County which must answer for each claim. If

intoxicated drivers or violators of the Vehicle and Traffic Laws are not apprehended and removed from the roads because enforcement is considered to be an additional and purely voluntary duty that may be ignored, what is the expense to not only the County, but also the innocent victims of these crimes and violations? How will this body explain to the parents of a child hit by a drunk driver that enforcement of the laws is not mandated and there is no money to provide for the safety of the children? How do you explain that these are simply voluntary duties that can be ignored because funding was not deemed to be required? How much will liability be increased if response times triple or quadruple because there are only 4 deputies per shift who must cover over one thousand square miles of territory in the county?

The cost to public safety is real and undeniable. The services outlined today are both mandated and essential to every resident in the County of Erie. You have repeatedly acknowledged public safety to be your number one priority. If that is so, funding at the February 14 level of appropriations is the barest of minimums that must exist. I tell you this based upon the laws which we have cited and I have provided for you, based upon my professional judgment gained after twenty three years of law enforcement and seven years as Sheriff, along with the combined expertise of other law enforcement professionals within the Sheriff's Office and across the Country. No additional reductions are possible if mandates are to be met. A mandate is a mandate. A law is a law. You cannot merely pick and choose the obligations that are yours. You have taken an oath to uphold the Constitution of the United States, the Constitution of the State of New York, and to faithfully discharge your duties. Government's fundamental duty is to protect its citizens. Peace and order can only be maintained and the people and property in Erie County can only be protected by you fulfilling your duties and responsibility to the citizens we collectively serve.

List of Attachments

- 1. 2005 Budget Submission to County Executive**
- 2. ECSO Position Status Report**
- 3. Comparison of 2004 Actual, 2005 Submitted, 2005 CAB, 2005 Tan**
- 4. ECSO 2004 Statistics**
- 5. ECSO Annual Report – 2003**
- 6. ECSO Distribution of Services**
- 7. New York State Commission of Corrections Minimum Standards (pg. 3)**
- 8-9. Staffing Analysis for the Erie County Holding Center and the Erie County Correctional Facility (pg. 3)**
- 10. Review of Sheriff Statutory Duties (Partial)**
- 11. CPL Article 430**
- 12. McKinney's Statute References to Sheriff Statutory Duties**
- 13. New York State Penal Law**
- 14. New York State Vehicle & Traffic Law**